



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

ELC CASE NO. 376 OF 2012

JOSEPH NJOROGE KANGARUAAPPLICANT

VERSUS

HARRISON WAGACHA MUNYUI.....DEFENDANT

RULING:

The Applicant herein **James Ndungu Ikere** the intended 2nd plaintiff has brought this chamber Summons application dated 22nd April , 2013 for orders that:-

- i. That **James Ndungu Ikere** be added into these proceedings as the 2nd Plaintiff.
- ii. That the Court do Order that CMCC No. 142 of 2012 filed in **Kiambu Law Courts** be transferred to the High Court, Environment and Land Court and be consolidated with this suit for determination.
- iii. Costs of the suit be provided for.

The application is supported on the grounds on the face of the application and on the supporting affidavit of James Ndungu Ikere. These grounds are:-

- a. That on 9th July, 2012, the intended 2nd Plaintiff filed a suit CMCC No. 142 of 2012 in Kiambu Chief Magistrates' Court where he sued 8 persons who included both the Plaintiff and the Defendant herein.
- b. That both the Plaintiff and the Defendant herein filed their respective responses in CMCC No. 142 of 2012 in Kiambu.
- c. That the intended 2nd Plaintiff was not aware that the Plaintiff has on 17th June, 2012 had filed this matter.
- d. Both the Plaintiff and the intended Plaintiff were sold the same parcel of land by the Defendants herein who concealed material facts to each other hence the conflict that is on the ground and subject of this suit. It is therefore important to have this matter heard together in the High Court .
- e. The parties herein shall not suffer any prejudice.

The application was opposed by the Defendant herein **Harrison Wagacha Munyui** . The Plaintiff did not file his Replying Affidavit. The respondent alleged that the application is misconceived, lacks merit and ought to be dismissed with costs.

The parties herein canvassed the application through written submission which I have considered. The instant application is titled Chamber Summons.

It is indeed true that the applicant had not stated the application is premised under which section of the Law. The applicant has sought for joinder of party, transfer and consolidation of suits. These are reliefs that are specifically provided by the Civil Procedure Act and Rules and applicant should have stated under what Laws the application is being brought.

However, Order 1 Rule 25 provides that application under rules 10 and 19 may be made orally in Court or by Summons in Chamber. I will be guided by Article 159(2) of the Constitution 2010 and Section 1A and 1B of Civil Procedure Act and allow the application to stand though the relevant Law has not been quoted.

Prayer No. 2 of the said application is on joinder of parties as provided by Order 1 Rule 1 which provides that:-

“ All persons may be joined in one suit as Plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transaction is alleged to exist, whether jointly, severally or in the alternative where if such persons brought separate suits, any common question of Law or fact would arise”.

The intended Plaintiff has filed a suit in **Kiambu Law Courts** against eight Defendants as per attached Plaint. However, in the instant suit, the Plaintiff has filed a suit against one Defendant.

The prayers sought in the two cases are different. The intended 2nd Plaintiff cannot be joined as a Plaintiff herein.

On the issue of consolidation, the Court concurs with the Defendants’ submissions that the two cases cannot be consolidated as the applicant’s suit does not meet the threshold of consolidation of suits as provided under Order 11 rule 1 of the Civil Procedure Rules 2010 where two or more suits are pending in the same Court in which the same or similar question of law or fact are involved and the Court may at its own discretion upon terms order consolidation of such suits.

Having found that the applicant has not demonstrated to the Court that there are sufficient grounds to join him as a Plaintiff or consolidate the new suits, the Court finds that the application for transfer of Kiambu CMCC No. 142 of 2012 to High Court cannot also stand. The Court disallows the applicants’ Chamber Summons dated 22/4/2013 with costs to the Defendant/Respondent.

Since Applicant had alleged that Kiambu Law Courts has no jurisdiction over his matter, then maybe he should proceed and withdraw the said suit in Kiambu Law Courts and later apply to be joined as an interested party in this suit but not as a Plaintiff.

It is so ordered.

Dated and delivered this 2nd day of October, 2013.

L.N. GACHERU

JUDGE

In the Presence of:-

..... **For the Plaintiff**

.....**For the Defendants**

Simiyu : Court Clerk

L.N. GACHERU